

**UNAPPROVED**  
**VIRGINIA BOARD OF FUNERAL DIRECTORS AND EMBALMERS**  
**BOARD MEETING MINUTES**

The Virginia Board of Funeral Directors and Embalmers convened for a board meeting on Tuesday, September 15, 2009 at the Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 201, 2<sup>nd</sup> Floor, Conference Room #3, Henrico, Virginia.

**CALL TO ORDER**

Mr. Minter, President, called the meeting of the Virginia Board of Funeral Directors and Embalmers to order at 9:07 a.m.

**BOARD MEMBERS PRESENT**

Randolph T. Minter, FSP, President  
Michael Leonard, FSP, Vice President  
Billie Watson-Hughes, FSP  
Blair Nelsen, FSP  
Willard. D. Tharp, FSP  
Barry Murphy, FSP  
Walter Ball, Citizen Member

**BOARD MEMBERS ABSENT**

Robert B. Burger, Jr., FSP, Secretary  
Rev. Yvonne Jones Bibbs, Citizen Member

**DHP STAFF PRESENT**

Lisa R. Hahn, Executive Director  
Sandra W. Ryals, DHP Agency Director  
Elaine J. Yeatts, Senior Policy Analyst  
Anne Artis, Licensure Operations Manager  
Jeanette Meade, Licensing Administrative Assistant

**BOARD COUNSEL**

Amy Marschean, Senior Assistant Attorney General

**QUORUM**

With 7 members present a quorum was established.

## **GUESTS PRESENT**

Steve Wooddell, Metropolitan Funeral Service  
Michael Nicodemus, CANA & Hollomon-Brown Funeral Home  
William Burrell, Richmond Funeral Directors Association  
Barry D. Robinson, Virginia Morticians Association  
Meredyth Partridge, Regulatory Support Services, Inc.  
Bo Keeney, Independent Funeral Homes of Virginia  
Lacy Whittaker, Virginia Funeral Directors Association  
Keith Whitt, Virginia Funeral Directors Association  
Bob Oman, Virginia Funeral Directors Association  
David Anderson, Virginia Funeral Directors Association

## **ORDERING OF AGENDA**

Upon a motion by Mr. Leonard, the Board voted to accept the amended agenda. The motion was properly seconded by Ms. Hughes. The vote carried unanimously.

## **ACCEPTANCE OF MINUTES**

Upon a motion by Ms. Hughes, the Board voted to accept the amended minutes. The motion was properly seconded by Mr. Tharp. The vote carried unanimously.

## **PUBLIC COMMENT PERIOD**

There were no public comments.

## **AGENCY DIRECTOR'S REPORT - SANDRA WHITLEY RYALS**

Sandra Ryals, Director of the Department of Health Professions was pleased to inform the Board that the Virginia Performs-Key Performance Measures were met in our agency with a clearance rate of 100% during the fourth quarter of this fiscal year 2009. She expressed that the staff in our board office as well as throughout the agency has worked hard on managing the age of pending case load to be closed within the 250 business days. The percent of cases resolved within 250 business days increased to 92% during the most recent quarter, exceeding the goal for a second consecutive quarter. She also indicated that the boards are achieving a 100% goal on licensing within 30 days of receipt of a completed application.

## **EXECUTIVE DIRECTOR'S REPORT**

### **Expenditure and Revenue Summary**

Ms. Hahn stated that the cash balance as of June 30, 2009, was \$(26,017). The revenue received for FY 09 was \$540,665, less the direct and allocated expenditures totaled

\$494,850, and ending cash balance as of June 30, 2009 was \$19,797. Ms. Hahn indicated that the Finance Division will be conducting a fiscal analysis of the department's expenditures and revenues once the calendar 2009 has ended and they will advise accordingly.

### **Licensee Statistics**

Ms. Hahn reported that there are 1,465 Funeral Service Providers, 140 Funeral Interns, 494 Funeral Establishments, 5 Embalmers, 84 Funeral Directors, 15 Branch Establishments, 80 Crematories, 26 Continuing Education Providers, 92 Courtesy Card Holders and 51 Surface Transportation and Removal Services.

### **Discipline Statistics**

Ms. Hahn stated we have 45 open cases (case load down from 22 in March); 30 cases are in the Enforcement Division at the Investigative stage; 9 cases are in the Probable Cause stage; 3 cases are in the Administrative Proceedings Division stage; 1 case is at the Informal stage and 2 cases are at the Compliance stage.

### **Virginia Performs**

Ms. Hahn reported for the fourth quarter ending March 30, 2009, that we have achieved a 100% rating for issuing licenses in less than 30 days and we achieved a 100% rating for patient care cases closed within 250 days. We did not have any customer satisfaction survey returned this cycle.

### **Miscellaneous Board Business**

Ms. Hahn included an FTC opinion on the Funeral Rule regarding providing prices by telephone to anyone who calls seeking such information. The letter was sent to Mr. Duffey, President of Everest Funeral Package, LLC from Craig Tregillus, FTC.

*See Attachment I. FTC Opinion on the Funeral Rule*

Ms. Hahn reviewed her organizational structure and acknowledged the recent staff changes for the Funeral Board. She indicated that Ms. Meade is the licensing specialist and she has been instrumental in improving the licensing processes. Ms. Artis remains the licensure operations manager and ensures that our licenses for all the boards are done in a timely and accurate manner. Ms. Hahn stated she was pleased with her entire staffs' performances in handling their individual boards, backing each other up and working together as a team.

Ms. Hahn thanked Blair Nelsen, FSP, for taking time out of his busy day to allow the Funeral Directors and Embalmers staff visit and tour his funeral home and crematory. He gave us an overview of the operations and provided the staff a chance for questions and answers.

Ms. Hahn developed a proclamation to Meg Mountcastle and asked the Board to make a motion to adopt the resolution. Upon a motion made by Mr. Tharp, the Board voted to accept the adoption of the resolution for Meg Mountcastle. The motion was properly seconded by Ms. Hughes. The vote carried unanimously.

### **Calendar**

Ms. Hahn discussed with the Board that they will need to have at least 4 board meetings a year. We discussed beginning our meetings in January 2010.

Ms. Hahn will work with Mr. Minter, President, to set the 2010 calendar.

### **NEW BUSINESS**

#### **Adoption of Exempt Action to correct agency's address and telephone numbers**

#### **§18VAC65-30-220. Content of preneed contracts**

### **III. CONSUMER INFORMATION**

The Board of Funeral Directors and Embalmers is authorized by Chapter 28 (§54.1-2800 et seq.) of Title 54.1 of the Code of Virginia to regulate the practice of preneed funeral planning. Consumer complaints should be directed to: *The Board of Funeral Directors and Embalmers, 6603 West Broad Street, 5<sup>th</sup> Floor, Richmond, VA 23230-1717, Telephone Number 804-662-9907*

- Upon a motion by Mr. Tharp, the Board voted to adopt an exempt action to change the Board's address and phone number in Regulations for Preneed Funeral Planning (Chapter 28). The motion was properly seconded by Ms. Hughes. The vote carried unanimously.

#### **Adoption of Exempt Regulation**

**HB 1969 Administrative Process Act; required review of feasibility of electronic submission.**

- Upon a motion by Ms. Hughes, the Board voted to adopt an exempt action to eliminate conflicts with electronic submission of renewals and applications in Chapters 20 and 40. The motion was properly seconded by Mr. Tharp. The vote carried unanimously.

**Legislative Proposals – Draft Legislation**

**§54.1-2818.1. Prerequisites for Cremation**

No dead human body shall be cremated without (i) permission of the medical examiner as required by § 32.1-284 and ~~either~~ (ii) visual identification of the deceased by the next-of-kin or his representative, who may be any person designated to make arrangements for the decedent's burial or the disposition of his remains pursuant to § 54.1-2825 or an agent named in an advance directive pursuant to § 54.1-2984 or ~~(iii) a twenty-four hour waiting period between the time of death and the cremation.~~ When visual identification is not feasible, other positive identification of the deceased may be used as a prerequisite for cremation. (1998, c. 867.)

- Upon a motion by Mr. Tharp, the Board voted to amend and reenact Section 54.1-2818.1 pertaining to prerequisites for cremation for the visual identification. The motion was properly seconded by Mr. Nelsen. The vote carried unanimously.

**Issuance of Courtesy Cards**

**§54.1-2801. Exemptions**

A. The provisions of this chapter shall not apply to any officer of local or state institutions or to the burial of the bodies of inmates of state institutions when buried at the expense of the Commonwealth or any of its political subdivisions.

B. Any person holding a license as a funeral director or embalmer or an equivalent in another state, having substantially similar requirements as the Board, may apply to the Board for courtesy card privileges to remove bodies from and to arrange funerals or embalm bodies in this Commonwealth. However, these privileges shall not include the right to establish or engage generally in the business of funeral directing and embalming in Virginia **and shall only be granted licensees of another state that grants similar courtesy card privileges to licensees of Virginia.**

- Upon a motion by Mr. Tharp, the Board voted to amend and reenact §54.1-2801, pertaining to the issuance of courtesy cards to licensees of other states. The motion was properly seconded by Mr. Nelsen. The vote carried unanimously.

## **Discussion regarding Refunds on Irrevocable Trusts- Preneed Rules and Regulations**

### **§18VAC65-30-110. Cancellation or transfer of contract.**

D. If the contract buyer uses an irrevocable trust as the funding source and terminates the contract after 30 days of its execution, the contract buyer may be eligible for a refund only with the agreement of the contract buyer, the contract beneficiary, and the trustee.

### **§18VAC65-30-230. Content of disclosure statements.**

If you have funded your preneed arrangement through an irrevocable trust you will not be able to cancel the trust agreement or receive a refund. An irrevocable trust is one that cannot be cancelled.

- Mr. Tharp offered to contact the various funding companies and it was suggested that he contact the Department of Social Services for their guidelines with regards to this matter. Therefore, this matter was tabled and it will be reviewed at another board meeting.

## **Recommendation from the Adhoc Committee regarding Refrigeration, Storage and Transportation to issue a NOIRA**

### **§18VAC65-20-611 Standards for proper handling of dead human remains**

A. Refrigeration. Upon taking custody thereof, a funeral establishment shall ensure that a dead human body is embalmed or maintained in refrigeration at 40 degrees Fahrenheit or less if it is to be stored for more than 48 hours.

B. Storage of remains. If a dead **unembalmed** human body is to be stored for more than 48 hours, it shall be maintained in a container that substantially meets following:

1. Be able to be closed in order to provide complete covering for the human remains;
2. Be resistant to leakage or spillage.

C. If a dead human body is to be stored at a location other than at the funeral establishment that has taken custody thereof, the funeral establishment shall disclose to the contract buyer the location where the body is stored and the method of storage.

D. Handling of animal remains. Funeral establishments, crematories or transportation services shall not transport animal remains together with dead human bodies nor refrigerate animal remains in a unit where dead human bodies are being stored.

- Upon a motion by Mr. Leonard, the Board voted to adopt a Notice of Intended Regulatory Action to amend regulations adding requirements for the standards for

proper handling of dead human remains in accordance with recommendations of the Ad Hoc Committee, with the exception that subsection B of a new section 611 would set out requirements for storage of unembalmed human body. The motion was properly seconded by Mr. Nelsen. The vote carried unanimously.

#### **Discussion regarding Manager of Record for Crematory**

- Can it be the same manager as the MOR for the Funeral Establishment
- If stand alone crematory, is a licensed FSP/MOR required
- Upon a motion by Mr. Leonard the Board voted to adopt a fast-track action to specify that the manager of a crematory does not have to be a licensed funeral service provider, the manager of record of a funeral establishment can be the same for the crematory at the same site, and that managers and operators must be recertified at least every five years and also create a definition for a crematory manager of record. The motion was properly seconded by Mr. Tharp. The vote carried unanimously.

#### **Discussion regarding Manufacturer Cremation Certification Training**

- Approval Process
- One time training or repeated training required after a specified duration
- Upon a motion by Mr. Leonard, the Board voted to withhold approval of any additional certifications for crematories until such certification programs can be reviewed for comparability with requirements of CANA and ICCFA certification programs. Also included in the motion was that managers and operators must be recertified at least every five years. The motion was properly seconded by Mr. Tharp. The vote carried unanimously.

#### **ADJOURNMENT:**

With no further business before the Board, the meeting adjourned at 11:30 a.m.

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Randolph T. Minter, President

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Lisa R. Hahn, Executive Director

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

# ATTACHMENT I

## FTC OPINION ON THE FUNERAL RULE





UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Division of Marketing Practices

Craig Tregillus  
ctregillus@ftc.gov

Direct Dial: (202) 326-2970  
Facsimile: (202) 326-3395

March 18, 2009

Mr. Mark W. Duffey, President  
Everest Funeral Package, LLC  
1300 Post Oak Blvd. - Suite 1210  
Houston, TX 77056

Dear Mr. Duffey:

You have requested a staff opinion on whether the Commission's Funeral Rule permits a funeral provider to decline to provide detailed price information in response to a telephone request made by or on behalf of your company. The Funeral Rule is clear: funeral providers must provide price information by telephone to anyone who calls seeking such information.

Everest is a nationwide funeral planning and concierge service that provides its customers with pre-need and at-need funeral planning assistance. A key feature of Everest's services is its "PriceFinder Report, an online tool that allows consumers to obtain comparative price information for funeral homes in their area. In order to obtain this information from the more than 20,000 funeral providers in the United States, Everest contracts with a telephone call center that telephones each provider annually to ask for the information on its General Price List ("GPL").

Section 453.2(b)(1) of the Funeral Rule requires funeral providers to "[t]ell *persons* who ask by telephone about the funeral provider's offerings or prices any accurate information from the prices lists described in paragraphs (b)(2) through (4) of this section [the Casket Price List, the Outer Burial Container Price List, and the GPL] and any other readily available information that reasonably answers the question."<sup>1</sup> Section 453.1(o) of the Rule defines a "person" as "any individual, partnership, corporation, association, government or governmental subdivision or agency, or other entity."<sup>2</sup> Thus, Everest and its call center agents are "persons" entitled by the Rule to obtain price information by telephone from all "funeral providers."

In the original Statement of Basis and Purpose for the Rule ("SBP"), the Commission emphasized that the requirement that funeral providers give price information by telephone upon request advances one of the Rule's primary goals; namely, to allow for comparison shopping:

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<sup>1</sup> 16 C.F.R. § 453.2(b)(1) (emphasis added).

<sup>2</sup> 16 C.F.R. § 453.1(o).



The second disclosure requirement, the telephone price disclosure requirement, addresses directly the record evidence that funeral directors have failed to respond to telephone inquiries about prices. Consumers will thus have the ability to call several funeral homes and compare their offerings before deciding where to purchase. . . . In many instances, obtaining price information by telephone represents the only practical opportunity for comparison shopping, since many options are foreclosed once the funeral home is [chosen].”<sup>3</sup>

The FTC’s Compliance Guide for funeral providers, *Complying with the Funeral Rule* (“Compliance Guide” or “Guide”), emphasizes that if a call requesting price information is received by a funeral provider, the call must be returned and the price information requested must be provided.<sup>4</sup> The Guide also makes it clear that funeral providers “cannot require callers to give their names, addresses, or phone numbers before [giving] them the requested information,” and cannot refuse to provide price information to callers who refuse to identify themselves.<sup>5</sup> The Guide also indicates, as the Rule provides, that the telephone price disclosure must be made by a “funeral provider” that receives a telephone inquiry about prices.<sup>6</sup> Nothing in the Rule authorizes a funeral provider to require a caller to place a second telephone call to a third party (e.g., an attorney) to obtain price information by telephone.

The Funeral Rule is a trade regulation rule duly issued by the Commission that has the full force and effect of federal law. As the Commission noted in the SBP, unless a state has obtained an exemption pursuant to § 453.9 of the Rule, “any state laws which conflict with this rule after its effective date are preempted to the minimum extent necessary to resolve that conflict.”<sup>7</sup> The same would be true for any state law enacted since that time.

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<sup>3</sup> 47 Fed. Reg. 42260, 42272 (1982). The Commission also noted that “[c]onsumer groups and state officials in numerous states reported substantial resistance or flat refusals when they attempted to gather price data by telephone for survey purposes.” 47 Fed. Reg. at 42268. When it amended the Rule in 1994, the Commission cited evidence that “the Rule overall is contributing to increased consumer ‘price sensitivity’ that leads some additional consumers to . . . seek comparative price information from non-industry sources . . . such as calling memorial societies, media price ‘hotlines,’ or state agencies that make comparative price information available.” 59 Fed. Reg. 1592, 1602 (1994).

<sup>4</sup> Compliance Guide (2004), p. 20.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* (“**You** must give consumers who telephone your place of business and ask about your prices or offerings accurate information from your General Price List, Casket Price List, and Outer Burial Container Price List”) (emphasis added). See also 16 C.F.R. § 453.2(b)(1).

<sup>7</sup> 47 Fed. Reg. at 42287 (footnote omitted).

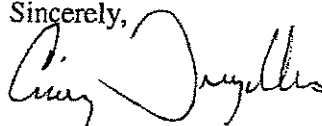
For these reasons, it is a violation of the Funeral Rule for a funeral provider to refuse to provide price information by telephone upon request to any person for any reason, such as:

- State law does not require a funeral provider to disclose price information by telephone, or permits a funeral provider to refuse to provide price information by telephone;
- Price information can be provided only by a third-party other than the funeral provider (e.g., the funeral provider's attorney);
- The caller will not disclose information about their organization, or what it intends to do with the information;
- The caller is not a consumer seeking to make funeral arrangements with the provider;
- The caller will or may profit from receipt of the pricing information requested;
- The caller has not requested price information in person at the funeral home;
- The caller has not requested price information in writing; or
- The caller has not paid a fee, or agreed to pay a fee, for the price information.

At the same time, as the Guide recognizes, funeral providers may: (1) use answering machines to record incoming calls or to advise callers to call a specified number during business hours to get price information; (2) decline to provide price information outside of regular business hours if that is the provider's normal practice; and (3) take a message if in the middle of an arrangements conference, and call back to provide price information at a later time.<sup>8</sup> In each of these cases, the Rule requires that the funeral provider furnish price information promptly by returning the telephone call.

As you know, the views expressed in this letter are those of the FTC staff. They have not been reviewed, approved, or adopted by the Commission, and they are not binding on the Commission or any individual Commissioner. However, they do reflect the views of FTC staff charged with enforcement of the Funeral Rule. Staff Funeral Rule opinions are routinely posted on the FTC website at <http://www.ftc.gov/bcp/online/edcams/funerals/staffopinions.shtml>.

Sincerely,



Craig Tregillus  
Funeral Rule Coordinator



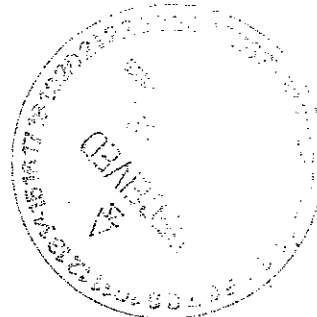
The First Nationwide  
Funeral Planning and  
Concierge Service

APR 13 2009

DHP

April 8, 2009

Virginia State Board of Embalmers & Funeral Directors  
9960 Mayland Drive, Suite#300  
Richmond, VA 23233-1463



Re: Federal Trade Commission ("FTC") Opinion on Funeral Rule Compliance

Ladies and Gentlemen:

As you may be aware, Everest is a nationwide funeral planning and concierge service. We provide current data on prices charged by funeral homes for their goods and services which we obtain by calling or otherwise communicating with funeral homes, requesting the information that the FTC's Funeral Rule requires them to provide.

Over the years that we have been collecting this pricing information, we found that a significant number of funeral directors refuse to comply with their Funeral Rule obligations, in most cases citing reasons that reflect a misunderstanding of what the Funeral Rule requires. We therefore asked the staff of FTC's Division of Marketing Practices to provide us with their opinion as to how the Funeral Rule applies to Everest and whether certain avoidance tactics used by some funeral directors violate the Funeral Rule. The FTC's staff responded favorably on March 18, 2009, copy attached. You can also obtain a copy of this ruling from the web sites of the FTC and the National Funeral Directors Association.

Among the bullet points on the last page that describe actions which violate the Funeral Rule is a rationale we often hear – that a funeral director's state law doesn't require him or her to provide the information or that the board said he doesn't have to comply with our request. We of course understand and appreciate that state regulatory boards are not involved with enforcement of the FTC's Funeral Rule, but as this opinion makes clear, nothing in state law excuses a funeral director from providing pricing information required under the Funeral Rule. We certainly are open to any suggestions your office may have that may help increase compliance with the Funeral Rule, should you have any interest in doing so.

Our primary purpose in writing to you is simply to advise you of this recent action by the FTC, particularly in case your office receives inquiries from funeral directors in your State about us. Our objective is to do everything we can to make sure all funeral homes operating in the United States are fairly and accurately represented in our national data base. We believe that our PriceFinder data base is a valuable tool that is used by families before and during their time of need to make informed choices in a transparent way.

Please do not hesitate to contact my office at (713) 993-0846 if you have any questions.

Regards,

Carolyn Johnson  
Vice-President of Client Services

Enclosure